IN THE HIGH COURT OF JUDICATURE AT BOMBY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7631 OF 2006

Shri Krishnat Maruti Dhanwade .....Petitioner.

V/s

Shri Rangrao Dashrath Sarnaik
and Others. .....Respondents.

Mr. K.S. Patil for the Petitioner.

Mr. C.J. Sawant, Senior Counsel, with Mr. P.D. Dalvi for Respondent Nos. 1 to 5.

Mr. A.S. Desai for Respondent Nos. 7, 8, 11 and 12.

Mr. V.B. Rajure for Respondent No.11.

Mr. K. Saste for Respondent Nos. 6, 9 and 10

CORAM: S.J. VAZIFDAR, J.
DATE : 22nd January, 2007

P.C:

1. Rule.

2. Rule is returnable and heard forthwith.

3. I am not inclined to interfere with the impugned order on the ground that the Society was restrained from disturbing Respondent Nos. 1 to 5 from acting as managing

committee members till disposal of the dispute despite no prayer for the same having been made in the dispute application. The argument is rather technical. The Petitioner and Respondent Nos. 6, 8, 9 and 10 were co-opted in place of Respondent Nos. 1 to 5. The injunction sought was to restrain the Petitioner and Respondent Nos. 6, 8, 9 and 10 from interfering with the functioning of Respondent Nos. 1 to 5. The relief granted and the relief prayed for are really two sides of the same coin. If the removal of Respondent Nos. 1 to 5 is held to be illegal, obviously, the Petitioner and Respondent Nos. 6, 8, 9 and 10 cannot function, for they were co-opted in their place.

4. The only question which requires consideration is : whether the procedure under bye-law No.40 had been followed ? The learned Judge has merely stated that this question requires to be investigated. The learned Judge ought to have given his finding, albeit, prima facie, on this issue. The impugned order does not give any reasons for the same. It is contended by the Counsel that evidence was produced in this regard.

5. In these circumstances, the impugned order is set aside and the matter is remanded to the Maharashtra State Co-operative Appellate Court to consider the issue as to whether bye-law No.40 was followed or not. However, the operative part of the order is not stayed at this stage. It would depend upon the outcome of the decision on remand. Rule is made absolute accordingly. The interim order passed by this Court on 22nd November, 2006 shall continue till the matter is finally decided and for a period of four weeks thereafter in the event of it being adverse to the Petitioner.

6. It is obvious that I have not made any observation on the merits of the point on which the matter has been remanded. There is nothing in this order which opines one way or the other on this issue. Mere fact that I have not stayed the operation of the impugned order does not indicate that I have even prima facie found the Respondents' case to be justified.